



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Motorola, Inc.  
**File:** B-225822  
**Date:** June 17, 1987

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### **DIGEST**

1. Contracting agency engaged in discussions with offeror where contracting officer invited and accepted significant additions to offeror's initial technical proposal which were necessary to determine if the offeror would fully meet the agency's requirements.

2. Contracting agency acted improperly by holding discussions and allowing submission of revised proposal by only one of two offerors in competitive range, since agency is required to hold discussions with all offerors in the competitive range if discussions are held with any offeror.

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### **DECISION**

Motorola, Inc. protests the award of a contract to General Electric Company (GE) under request for proposals (RFP) No. DAEA08-87-R-0004, issued by the Army for a nontactical radio system. Motorola argues that the Army improperly held discussions with GE and allowed it to revise its technical proposal, without holding discussions with Motorola or giving it an opportunity to submit a revised proposal. We sustain the protest.

The RFP, issued on December 17, 1986, called for engineering, furnishing, installing, testing and maintaining a nontactical radio system in support of the Tenth Pan American Games to be held in Indianapolis and Michigan City, Indiana in August 1987. The RFP required offerors to submit a technical proposal addressing the proposed design of the radio system together with prices for minimum and maximum quantities of equipment specified by line item in the RFP. The RFP provided that award of a fixed-price indefinite quantity contract would be made to the lowest priced, technically acceptable offeror.

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Motorola and GE submitted initial proposals by the February 2, 1987 closing date. A third offeror, Alexander Manufacturing Company, was immediately found unacceptable because it did not submit a technical proposal or prices for all the line items in the RFP. By letter dated February 9, the contracting officer, referring to a February 5 meeting between the Army and GE held "to discuss technical questions" regarding GE's proposal, asked GE to respond to three questions set out in the letter. As discussed in detail below, the questions called for GE to amplify its responses to several requirements set out in the RFP's statement of work. GE replied by letter dated February 11. On February 12, the agency's technical evaluation team found both Motorola and GE to be technically acceptable.

The contracting officer then sent GE a letter dated February 20, the purpose of which was to reiterate a February 18 telephone conversation between GE and the Army regarding the applicability of various standard Federal Acquisition Regulation (FAR) clauses incorporated in the RFP. The letter identified those clauses which would be deleted or modified, and those which would remain in the contract awarded under the RFP. GE replied by letter dated February 24, accepting the Army's position.

The contracting officer did not raise any technical issues with Motorola similar to those raised in the February 9 letter to GE, nor was Motorola advised of the Army's conclusions regarding the FAR clauses which were the subject of the contracting officer's February 20 letter to GE. The only letter sent to Motorola, dated February 20, advised Motorola of an error in computation of the extended prices for two line items in its proposal. By letter dated February 24, Motorola corrected the two errors.

On March 6, award was made to GE as the lowest priced, technically acceptable offeror.

Motorola argues that the exchange of letters between the contracting officer and GE constituted discussions and submission of a revised proposal and, as a result, it was improper for the Army to make award under the RFP without also holding discussions with Motorola and giving it the opportunity to submit a revised proposal.<sup>1/</sup> We agree.

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<sup>1/</sup> In its initial protest letter, Motorola raised several other grounds of protest. In its comments on the Army report, Motorola withdrew all the protest grounds it had raised except the issue of whether discussions had been held with GE.

Discussions occur when an offeror is given an opportunity to revise or modify its proposal, or when information requested from and provided by an offeror is essential for determining the acceptability of its proposal. FAR, 48 C.F.R. § 15.601 (1986). Discussions are to be distinguished from a request for clarifications, which is merely an inquiry for the purpose of eliminating minor uncertainties or irregularities in a proposal. Greenleaf Distribution Services, Inc., B-221335, Apr. 30, 1986, 86-1 CPD ¶ 422. As explained below, we find that by inviting and accepting significant additions to GE's proposal, the Army engaged in discussions with GE.

The contracting officer's February 9 letter to GE set out three questions to which GE was asked to respond. Two of the questions concerned specific provisions in the statement of work relating to installation of equipment in accordance with standard commercial practice and relocation of radio antenna mounting structures after equipment installation. The other question was more general in nature and provided as follows:

"Information and data contained in the General Electric proposal was unclear in its conceptual approach to satisfy engineering requirements that pertain specifically to Statement of Work paragraphs 3.1.2, 3.3.1, and 3.3.2. Please provide the engineering approach as required on SOW." (Emphasis added.)

Paragraph 3.1.2 of the statement of work, cited in the Army's question, calls for a complete system design. Paragraphs 3.3.1 and 3.3.2 relate to frequency assignment and frequency interference analysis, and provide as follows:

"3.3 FREQUENCY COORDINATION/ELECTROMAGNETIC COMPATIBILITY.

3.3.1 Table 2 is a generalized list of frequencies required for the system. The contractor shall engineer the system using frequencies in the VHF sub-band, 139-150Mhz. Exact authorized frequencies will be supplied no later than March 1, 1987. If additional frequencies are needed, the contractor shall advise the contracting officer of these requirements.

3.3.2 The contractor shall conduct an electromagnetic compatibility evaluation to determine potential interactions between the planned system and existing

systems. Any potential interference problems shall be addressed by the contractor in the system design."

In its February 11 letter responding to the Army's inquiry, GE included an attachment supplementing its initial proposal with a "recommended systems engineering approach," a frequency plan, and an "RF channel plan." In addition, with regard to the interference analysis called for by section 3.3.2 of the statement of work, GE's initial proposal stated that such an analysis could not be performed until the specific frequencies were assigned; in its February 11 letter, however, GE stated that it had made an interference analysis based on information in the RFP and expected no interference from existing radio systems.

The Army argues that the matters raised in the letters between the contracting officer and GE were merely clarifications to GE's proposal, involving information that was not essential to determining the technical acceptability of GE's proposal. In our view, the record does not support the Army's position.

First, the nature and extent of the information provided by GE, even considering only its response to the Army's general question, set out above, regarding GE's engineering approach, bears directly on the central requirement under the RFP for a system design. Further, GE's responses, rather than merely clarifying information already furnished, significantly supplemented its proposal. GE's February 11 letter included as an attachment nine pages of narrative, captioned "Revised 2-11-87," which in part either modified or supplemented portions of GE's initial technical proposal, as well as a revised discussion of the frequency interference analysis requirement and four pages listing recommended frequency assignments which were absent from its initial proposal.

The importance of the additional information to the Army's evaluation of GE's proposal is shown in two affidavits provided by the Army from members of the technical evaluation team explaining the reason for the contracting officer's February 9 letter to GE. As noted above, the RFP specified a range of minimum and maximum quantities of equipment. The Army states that the exact quantities to be purchased under the RFP were not known at the time the proposals were being evaluated because of the possibility that some equipment would be furnished from other sources without the need for Army funding. As a result, the Army planned to make an initial award only for the minimum quantities specified in the RFP, with additional quantities to be acquired if necessary.

According to the affidavits by the Army's technical evaluation team members, because of the uncertainty regarding the final quantities to be acquired, it was particularly important to understand the offerors' engineering approach, in order to ensure that any additional quantities over the minimum initially acquired could be accommodated in the proposed system. Specifically with regard to GE, one affidavit states that "further clarification was required from GE to further explain their methodology which would allow the government to assure itself that the GE proposal allowed for those unknown requirements." In our view, the affidavits demonstrate that the information in GE's initial proposal was insufficient to determine whether GE would meet the Army's needs for the full quantities of equipment set out in the RFP. Accordingly, by allowing GE the opportunity to significantly supplement its initial proposal in order to respond adequately to the RFP requirements, the Army engaged in discussions with GE.

When discussions are held with one offeror, the contracting agency must hold discussions with all offerors in the competitive range and give them an opportunity to revise their proposals. 10 U.S.C. § 2305(b)(4)(B) (Supp. III 1985); Menasco, Inc., B-223970, Dec. 22, 1986, 86-2 CPD ¶ 696, aff'd on reconsideration, Mar. 20, 1987, 87-1 CPD ¶ 317. Here, the Army failed to hold discussions with Motorola or allow it to submit a revised proposal, both of which could have affected the outcome of the competition, at a minimum by giving Motorola an opportunity to lower its price. See Bromma, Inc., B-225663, May 6, 1987, 87-1 CPD ¶ \_\_\_\_.

As noted above, a second round of correspondence between GE and the contracting officer involved the applicability of various standard FAR clauses in the RFP. In view of our finding that the first exchange of letters constituted discussions, we need not decide whether the subsequent correspondence also constituted discussions.


In determining the appropriate remedy, we note that installation of the system and delivery of equipment by GE has proceeded to meet the Army's deadline of a fully operational system by July 1.<sup>2/</sup> Under these circumstances,

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<sup>2/</sup> The Army authorized GE to proceed with performance notwithstanding the protest based on its determination under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(2)(A)(ii) (Supp. III 1985), that urgent and compelling circumstances significantly affecting the interests of the United States would not permit waiting for a decision on the protest.

we do not believe it is feasible for the Army to reopen discussions, nor do we see any basis for recommending, as Motorola suggests, that the Army place any orders for additional equipment with Motorola instead of GE, since it has not been established that Motorola would have received award if discussions had been held. Instead, we find that Motorola is entitled to recover its proposal preparation costs and the costs of filing and pursuing the protest, including attorney's fees. Bid Protest Regulations, 4 C.F.R. §§ 21.6(d) and (e) (1986); Bromma, Inc., B-225663, supra. Motorola should submit its claim for costs directly to the contracting agency. 4 C.F.R. § 21.6(f).

The protest is sustained.

*for*   
Comptroller General  
of the United States